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89

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,870	12/07/2000	Mark Joseph Hamzy	AUS9-2000-0656-US1	9794
7590	06/30/2004			
Robert H. Frantz P.O. Box 23324 Oklahoma City, OK 73123-2334			EXAMINER ROBINSON BOYCE, AKIBA K	
			ART UNIT 3623	PAPER NUMBER

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/731,870

Applicant(s)

HAMZY ET AL.

Examiner

Akiba K Robinson-Boyce

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 120700.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Claims***

1. Due to communications filed 12/7/00, the following is a non-final first office action. Claims 1-30 are pending in this application and have been examined on the merits. Claims 1-30 are rejected as follows.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 9, 13, 20, 24, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 9, 13, 20, 24, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3623

5. Claims 1, 4, 5, 6, 8, 9, 12, 13, 16-20, 23, 24, 27-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Von Kohorn (US 6,443,840)

As per claims 1, 9, 13, Von Kohorn discloses:

A method for conducting analysis of consumer reaction, (Ab. Lines 1-2, [evaluating responses]/ A computer-readable medium containing program code for conducting analysis of consumer reaction, (Col. 77, lines 50-58, [computer which provides a program to marketing and advertising messages and campaigns, (Col. 2, lines 25-28, [advertising program]), over computer networks such as the Internet, (Col. 138, lines 35-40, [communicating via the Internet], said marketing and advertising messages being delivered from a server computer to a client device via a computer network in forms such as web objects, graphic image files, audio recording files, and video segment files, (Col. 138, lines 35-40, [where communication via the internet and internet web site represents the communication of web objects and graphic image files], Col. 17, lines 44-47, [radio/television transmitter], said method comprising the steps of:

transmitting a selected advertising message to a client device for presentation to a consumer user/receiving an advertising message for presentation to a consumer user/transmitting to a client device via a computer network an advertising message for presentation to a consumer user, (Col. 2, line 54, [transmission of broadcast program], col. 138, lines 35-40, [where communication of the television transmission is via the Internet]);

automatically recording at least one consumer user reaction on a timed interval basis relative to the time of presentation of said selected advertising message/recording

Art Unit: 3623

at least one consumer user reaction on a timed interval basis relative to the time of presentation of said selected advertising message, (Col. 3, lines 11-12 and lines 26-38, [recording device, timing circuitry], Col. 2, lines 55-58, [transmitting signals at a fixed predetermined time to persons who will respond to the program, timing circuitry]); and

transmitting one or more recorded consumer user reactions to a marketing server from said client device via a computer network such that said recorded consumer user reaction may be reviewed or otherwise analyzed/receiving from a client device via a computer network one or more recorded consumer user reactions such that said recorded consumer user reacting may be reviewed, stored or otherwise analyzed, (Col. 121, lines 47-52, [elicited consumer reactions forming a marketing database to provide information and leads for advertising, promotions and direct mailings]).

As per claims 4, 12, 16, 23, 27, Von Kohorn discloses:

wherein said set of recording/wherein said program code for recording at least one consumer user reaction comprises capturing an audible recording from a microphone associated with said client device, (col. 10, lines 21-25, [audio recorder], w/ Col. 110, lines 6-12 and lines 47-53, col. 8, lines 5-8, [responses communicated to the central station via telephone link from each electronic hub], [usage of telephone hub to score responses], w/ 64, lines 15-31, [using a microphone to speak to the callers]).

As per claims 5, 17, 28, Von Kohorn discloses:

automatically analyzing/program code for automatically analyzing said captured audible recordings for indications of favorable, unfavorable, and indifferent reactions to said advertising message, (Col. 38, lines 39-51, [acceptable responses], col. 52, lines

Art Unit: 3623

49-50, [unacceptable], [where indifferent reactions are inherent with Von Kohorn since acceptable and unacceptable reactions are already determined and indifferent reactions is a reaction in between acceptable and unacceptable]).

As per claims 6, 18, 29, Von Kohorn discloses:

Collecting/program code for collecting transmitted recorded consumer user reactions for a plurality of consumer users for further analysis on a group or statistical basis, (Col. 24, lines 53-61, [statistical analysis]).

As per claims 8, 19, 30, Von Kohorn discloses:

Selecting/program code for selecting additional advertising messages for transmission to a consumer user based upon a consumer user's preferences and a consumer user's historical reaction to previous advertising messages, (Col. 61, lines 53-59, [history, preferences]).

As per claim 20, Von Kohorn discloses:

A system for conducting analysis of consumer reaction, (Ab. Lines 1-2, [evaluating responses], to advertising messages and campaigns, (Col. 2, lines 25-28, [advertising program]), over computer networks such as the Internet, (Col. 138, lines 35-40, [communicating via the Internet], said marketing and advertising messages being delivered from a server computer to a client device via a computer network in forms such as web objects, graphic image files, (Col. 138, lines 35-40, [where communication via the internet and internet web site represents the communication of web objects and graphic image files], said client device having a processor for executing program code, (col. 35, lines 47-49, [processor]), a network interface for communicating to a server via

Art Unit: 3623

a computer network, (col. 8, lines 5-8, [responses communicated to the central station via telephone link from each electronic hub]), at least one user output device, (Col. 35, line 49, [response signals outputted by the keyboard]) and at least one user input device, (col. 35, lines 46-47, [first and second input terminals]), the system comprising:

an receiver for advertising messages from a server via a computer network through said network interface, (col. 12, lines 37-40, [central station represents the server and the means for observing advertises messages through the broadcast program]);

an advertising message presenter for presenting an advertising message, (Col. 12, line 42, [means for observing]);

a consumer user reaction recorder, operable on a timed interval basis relative to the time of presentation of said advertising message, (Col. 3, lines 11-12 and lines 26-38, [recording device, timing circuitry]), and

a reaction transmitter for sending one or more recorded consumer user reactions to a marketing server from said client device via a computer network such that said recorded consumer user reaction may be reviewed or otherwise analyzed, (Col. 121, lines 47-52, [elicited consumer reactions forming a marketing database to provide information and leads for advertising, promotions and direct mailings], Col. 6, lines 22-23, where a reaction transmitter is inherent with this citation since acceptable responses are transmitted to the response unit, and some type of means are needed to do the transmitting).

As per claim 24, Von Kohorn discloses:

A system for conducting analysis of consumer reaction, (Ab. Lines 1-2, [evaluating responses], to advertising messages and campaigns, (Col. 2, lines 25-28, [advertising program]), over computer networks such as the Internet, (Col. 138, lines 35-40, [communicating via the Internet], said marketing and advertising messages being delivered from a server computer to a client device via a computer network in forms such as web objects, graphic image files, (Col. 138, lines 35-40, [where communication via the internet and internet web site represents the communication of web objects and graphic image files], said client device having a processor for executing program code, (col. 35, lines 47-49, [processor]), a network interface for communicating to a server via a computer network, (col. 8, lines 5-8, [responses communicated to the central station via telephone link from each electronic hub]), at least one user output device, (Col. 35, line 49, [response signals outputted by the keyboard]) and at least one user input device, (col. 35, lines 46-47, [first and second input terminals]), the system comprising:

An transmitter for sending advertising messages from a server to a client device via a computer network through said network interface, (Col. 17, lines 44-47, [radio/television transmitter])

A consumer reaction recording receiver for receiving one or more recorded consumer user reactions from a client device via a computer network such that said recorded consumer user reaction may be reviewed, stored or otherwise analyzed, (Col. 3, line 33, [recording device]).



***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 7, 10, 11, 14, 15, 21, 22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Kohorn (6,443,840) as applied to claim 1 above, and further in view of Dowling (US 6,548,967).

As per claims 2, 10, 14, 21, 25, Von Kohorn fails to disclose capturing/program code for capturing a visual image of a consumer user's face from an electronic camera associated with said client device, but does disclose that response units are equipped with video means in col. 10, lines 6-12.

However, Dowling discloses:

Capturing/program code for capturing a visual image of a consumer user's face from an electronic camera associated with said client device, (Col. 10, lines 37-47, [facial expressions]). Dowling discloses this limitation in an analogous art for the purpose of gauging the customer's interest in and reaction to an advertisement.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to capture a visual image of a consumer user's face from an electronic camera associated with said client device with the motivation of analyzing a facial expression to determine the customer's reaction to an advertisement.

As per claims 3, 11, 15, 22, 26, Von Kohorn fails to disclose automatically analyzing/program code for automatically analyzing said captured visual images for indications of favorable, disfavorable, and indifferent reactions to said advertising message, but does disclose that response units are equipped with video means in col. 10, lines 6-12.

However, Dowling discloses:

automatically analyzing/program code for automatically analyzing said captured visual images for indications of favorable, disfavorable, and indifferent reactions to said advertising message, (Col. 10, lines 51-55, [analyzing to find the most engaging, effective, advertisement]). Dowling discloses this limitation in an analogous art for the purpose of determining which advertisement would be the most engaging and effective advertisement to show a user.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to automatically analyze said captured visual images for indications of favorable, disfavorable, and indifferent reactions to said advertising message with the motivation of analyzing a facial expression to determine the result of a customer's reaction to an advertisement).

As per claim 7, Von Kohorn fails to disclose the step of collecting transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations, but does disclose recording consumer user reactions in col. 3, lines 26-38.

However, Dowling discloses:

collecting transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations, (Col. 13, line 65-Col. 14, line 3, [browser interface]). Dowling discloses this limitation in an analogous art for the purpose of presenting a data collection device that will help monitor consumer actions and reactions.

It would have been obvious to one of ordinary skill at the time of the applicant's invention to collect transmitted recorded consumer user reactions for a single consumer user during a thread of browsing advertisement for further analysis of a consumer user's reaction to a series of advertisements or presentations with the motivation of determining how a user reacts to advertisements as a result of browsing.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Art Unit: 3623

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.  
June 16, 2004



**TARIQ R. HAFIZ**  
**SUPERVISORY PATENT EXAMINER**  
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